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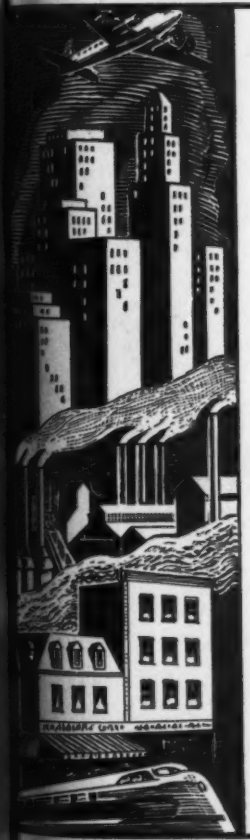

Dissolution Before or After January 1

In a number of states, the completion of the contemplated dissolution of a corporation before January 1 may make unnecessary the filing of certain reports and the payment of certain fees . . . . . Page 183

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Highest Massachusetts court upholds recapitalization plan providing, upon exchange of preferred stock, for elimination of accrued unpaid dividends . . . . . Page 185

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a decisive date

Dissolution Before and After January 1

WHERE the dissolution of a corporation is contemplated by counsel toward the end of a year, the completion of dissolution before January 1 has been found, in many states, to result in eliminating liability for the filing of returns and the payment of taxes which would otherwise become due if dissolution were delayed until after January 1.

Income Taxes.—There are 32 jurisdictions which impose corporate income taxes where, if a domestic corporation has been filing income tax reports on a calendar year basis, dissolution *before* January 1 will eliminate the necessity of the preparation of an *additional* income tax report, and the payment of any tax due, for the short period from that January 1 to the time of dissolution in the new year, which would otherwise be due. These jurisdictions are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Wisconsin.

Franchise Taxes.—In several states, if dissolution is not effected prior to January 1, it has been found that liability for the franchise tax will attach on that date for the year in which that January 1 falls. These states are Georgia, Maryland, New Hampshire, New Jersey, New Mexico, Ohio and Pennsylvania (Capital Stock Tax) and Virginia. There may be added to these states, California, Connecticut, the District of Columbia, Minnesota, New York, Utah and Vermont, previously mentioned, where franchise taxes are based on net income.

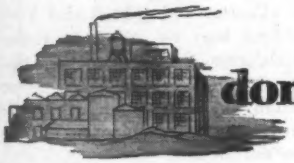
Property Tax Assessments.—Property is assessed as of January 1 in 20 states for ad valorem tax purposes. The disposition of property prior to January 1, owned and located in these states, has been found to eliminate liability for taxes on property which would otherwise be required to be reported and taxed as of that January 1. The 20 states are Arkansas, Florida, Georgia, Iowa, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Utah, Virginia, Washington, Wisconsin.

Sales Tax License Renewals.—In Alabama, Colorado and Utah, licenses issued in connection with sales tax requirements are renewable on or before January 1. A complete halt in selling operations prior to January 1, where dissolution in one of these states is being considered, would serve to make unnecessary a renewal of the sales tax license related to the year to come.

Chain Store License Renewals.—A renewal of chain store licenses is required in eight states on or before January 1, these are Colorado, Georgia, Idaho, Indiana, Montana, South Dakota,

Texas and West Virginia. The closing of all stores in one or more of these states before the end of the year would have the effect of making unnecessary the securing of licenses for such stores for the following year.

Occupation License Tax Renewals.—January 1 is the date in five Southern states on which a renewal is required of numerous occupation licenses, exacted for the privilege of engaging in a particular type of business. These states are Georgia, Louisiana, Tennessee, Texas and Virginia. Where, before January 1, a taxable occupation is discontinued in one of these states, a renewal of that license for the coming year is eliminated.



domestic corporations

MARYLAND

Stockholder seeking relief under reorganization plan ruled without standing to obtain relief where plan had been consummated and value of his stock had been enhanced and consummation of plan had not injured corporation's asset position.

In *Brown v. Eastern States Corporation et al.*, 86 F. Supp. 887, (The Corporation Journal, March, 1950, page 105), the United States District Court, District of Maryland, held that stockholders' approval was not required in order to give effect to a plan submitted by defendant Maryland investment company's directors to its preferred shareholders, which offered an exchange of the preferred shares for shares in another company held by defendant and for cash, in addition.

Upon appeal, the United States Court of Appeals, Fourth Circuit, has affirmed the order of the District Court dismissing the suit, without prejudice to the right of the plaintiff common and preferred stockholder to apply again for relief if a further attempt were made to carry out the plan or another plan thought to be violative of his rights as a stockholder. The court's primary basis for affirming the order dismissing the suit, was that plaintiff was in no position to petition for relief, regarding him as not having been injured as a holder of either common or preferred stock by what had been done under the plan and that the corporation, likewise, had not been injured, under the particular circumstances, which revealed an enhancement of the value of plaintiff's stock. It also appeared that the corporation had greater assets in proportion to its outstanding liabilities as a result of the exchanges which had taken place under the plan. The time for acceptance of the plan had elapsed and plaintiff was regarded as having no further need of the restraining injunction which he had sought.

Brown v. Eastern States Corporation et al., 181 F. 2d 26. Eugene M. Feinblatt of Baltimore, Md., and David I. Shivitz of New York City (Simon E. Sobeloff of Baltimore, Md., and Edmund B. Hennefeld, of New York City, on brief), for appellant. Horace R. Lamb, of New York City, and George Cochran Doub, of Baltimore, Md., (Marshall, Carey, Doub & Mundy, of Baltimore, Md., and LeBoeuf & Lamb, of New York City, on brief) for appellees.

MASSACHUSETTS

Highest state court upholds recapitalization plan providing, upon the exchange of preferred stock, for the elimination of accrued unpaid dividends on preferred stock.

General Laws (Ter. Ed.) Ch. 156, Sec. 42, contains a provision that a Massachusetts corporation may, at a meeting duly called for the purpose, by vote of two-thirds of each class of stock outstanding and entitled to vote, change "the classes of its capital stock subsequently to be issued and their preference and voting power, or make any other lawful amendment or alteration in its agreement of association or articles of organization."

Plaintiff was the owner of common stock of no par value and of the 7% $100 par preferred stock of defendant. Dividends of $70 per share had accumulated and remained unpaid in 1944 at a time when a recapitalization plan was approved by more than 97% of the preferred and 93% of the common stock, only 20 shares of the preferred and none of the common stock being voted against the plan. Plaintiff did not attend any meeting at which the plan was considered and did not communicate her opposition to the defendant. Under the plan, only one class of stock, called capital stock, was to exist, of the par value of $20.00. Three shares of the new capital stock were to be issued for one share of the preferred stock and one share for each ten shares of common stock. The assets were sufficient to pay off the preferred stock at par value, plus all accumulated dividends.

The Supreme Judicial Court of Massachusetts denied the plaintiff relief, finding the plan to be in conformity with the statute, and observed: "The reorganization plan adopted in 1944 does not appear to have been unfair to the plaintiff. The difference which it made in the value of her holdings was inconsequential. The vast majority of both preferred and common stockholders deemed it advantageous. Its indirect results upon the prosperity of the corporation may well have benefited the plaintiff as well as the other stockholders. The very purpose of the statute was to enable the mass of stockholders to make changes in the corporate structure even against the will of a small minority, and not to leave it in the power of a single stockholder to insist that the corporate structure remain rigid, fixed and inflexible."

Janes v. Washburn Co., 91 N. E. 2d 920. J. A. Crotty of Worcester, for plaintiff. M. S. June of Worcester (C. B. Barnes, Jr., of Boston, with him), for defendants.

NEW JERSEY

1946 Escheat Act construed by highest state court.

The Supreme Court of New Jersey has recently held that the following types of property in the possession of the defendant New Jersey company, and unclaimed for more than fourteen years, did not constitute escheatable property under Chapter 155, Laws of 1946, as amended by Chapter 357, Laws of 1947, by reason of a bar of the statute of limitations, the court observing that "where that defense is sufficient in law, there is no property subject to escheat":

Unpaid wages of former employees of defendant whose services were rendered in New Jersey;

Amounts of unpresented commercial bank checks issued by the corporation; and

Moneys held by the corporation on account of coupons of a 20-year 5% debenture issue of 1926.

The right to interpose the bar of the statute of limitations was regarded by the court as a vested property right, under New Jersey law, which the law-making body "may not abrogate or impair." The court remarked: "When the remedy is taken away, the right ceases to exist."

The court ruled also that R. S. 2:24-1, barring a recovery for a debt after a lapse of six years from the accrual of the cause of action did not operate to extinguish the rights of stockholders of defendant to unpaid dividends declared upon shares of its capital stock or to affect, similarly, moneys held by defendant which had been withheld from wages of former employees for the purchase of Liberty Bonds. The principle of the constitution of the corporation, under such circumstances, as a trustee for the stockholders and former employees, respectively, was regarded by the court as rooted in the jurisprudence of the state, and the statute of limitations mentioned viewed as not applying, so as to prevent the escheating of such property.

With reference to the statutory procedure effecting escheat, the court remarked: "Where the procedure is appropriate, neither the due process clause nor any right of the defendant corporation under the contract clause is violated by a law requiring it to deliver to the State property which has long remained unclaimed and presumably has been abandoned. The prescribed notice answers the demands of the process. No other service is feasible in the circumstances. In the nature of things the owners of the property can be treated as persons unknown. The defendant corporation's capital stock escheated by the judgment were all shares on which dividends had remained unclaimed for more than fourteen successive years immediately prior to the institution of the proceeding. There is in this situation a presumption of abandonment. A different case would be presented if no dividends had been declared during the statutory period, and there was no showing that the owner's whereabouts was unknown for the statutory period."

State of New Jersey v. Standard Oil Company, Supreme Court of New Jersey, June 27, 1950. Stryker, Tams & Horner of Newark, for appellant. Emerson Richards, Deputy Attorney General; Theodore D. Parsons, Attorney General, on the brief, for the State. Commerce Clearing House Court Decisions Requisition No. 436913; 74 A. 2d 565.

Vehicles of a New Jersey corporation, using the New Jersey highways, "based" in another state where the business was carried on, ruled subject to New Jersey registration.

Respondent was a New Jersey corporation with its designated principal office or place of business in South River, Middlesex County, New Jersey. A common carrier, it operated in interstate commerce, throughout twelve Eastern States. Its vehicles were not registered under the New Jersey motor vehicle requirements which impose registration upon "every resident of this state and every nonresident whose automobile or motorcycle shall be driven in this state." A motor vehicle of respondent, which was based and licensed in Rhode Island, while engaged in furthering respondent's interstate commerce, was operated by one of its employees in being driven through New Jersey to a point in Maryland when the summons in this proceeding was served. Subsequently, the respondent was convicted on a complaint charging the operation an unregistered motor vehicle on a New Jersey public highway.

The Supreme Court of New Jersey ruled that the conviction should be affirmed, inasmuch as respondent was subject to the requirements as a resident of New Jersey and could not be considered a nonresident and take advantage of any exemption granted nonresidents. Referring to the statute, R. S. 39:3-4, the court said: "We do not find in this or related statutory provisions the expression of a purpose to permit the operation in this state of a motor vehicle of a New Jersey corporation, unregistered under R. S. 39:3-4, N.J.S.A., because the vehicle is 'based' in another jurisdiction where the corporation is engaged in business. R. S. 39:3-4, N.J.S.A., contains a peremptory command that except as thereinafter provided 'every resident of this State and every nonresident' shall be subject to the rule of registration." The fact that the vehicle was engaged in interstate commerce was not regarded as material, as the requirements did not impose a direct and material burden on interstate commerce but constituted "a reasonable exercise of the police power for public safety and order in a field not occupied by the Federal authority." The regulation was not regarded as working a denial of the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution. The court felt there was no undue discrimination against resident owners who engaged in business elsewhere, as "they are not, for that reason, entitled to free use of the State's highways for their motor vehicles registered outside the state."

State v. Garford Trucking, Inc., 72 A. 2d 851. Stephen V. R. Strong, Assistant County Prosecutor, New Brunswick, argued the cause for the State. Matthew F. Melko, County Prosecutor, Perth Amboy, on the brief. Baruch S. Seidman, So. River, argued the cause for the respondent. Burton, Seidman & Pressler of So. River, attorneys.

OKLAHOMA

Acting or de facto secretary-treasurer of close corporation held empowered to declare dividend, under circumstances where de jure secretary-treasurer could declare one, as authorized by the by-laws.

The by-laws of an Oklahoma corporation, the stock of which was closely held, contained this provision: "Whenever the surplus profits of the company amount to one percent, or more, of the capital stock, the secretary-treasurer may declare a dividend on the shares of stock." There were only four stockholders, three of whom were the directors, and the acts of the officers were usually carried on in an informal manner. The question raised concerned the validity of a dividend declared by a stockholder who was acting as de facto secretary-treasurer of the company by consent of the other stockholders. The dividend was thus declared at a time when this stockholder was still, as determined by the court, manager of the company and when the company had no secretary-treasurer, the person who had previously held that office having resigned and no successor having been elected.

The Supreme Court of Oklahoma ruled that the by-law constituted a valid delegation of power to declare a dividend by the secretary-treasurer where the precedent conditions therein expressed existed. The record was found to disclose that the dividend declared was within the existing net surplus and also valid as to amount. The court also expressed the view that "The acting secretary-treasurer in a close corporation where all of the stockholders are fully aware that said de facto secretary-treasurer is performing all of the duties imposed on the secretary-treasurer may declare a dividend where the de jure secretary-treasurer could declare one under the by-laws of the corporation."

Blair et al. v. Bishop's Restaurants, Inc., 217 P. 2d 161. Mosteller & McElroy of Oklahoma City, for plaintiffs in error. Keaton, Wells, Johnston & Lytle of Oklahoma City and T. Austin Gavin of Tulsa, for defendants in error.

foreign corporations

ALABAMA

Service of process upon unlicensed foreign corporation doing business in state, effected upon state official as its presumed statutory agent, upheld as compliance with due process.

Code of Alabama, 1940, Title 7, Section 193, permits service of process to be made upon the Secretary of State as the presumed process agent of an unlicensed foreign corporation doing business in Alabama, under circumstances, among others, where no agent of the corporation upon whom process can be served can be found in the state.

In a suit taken to the United States Court of Appeals, Fifth Circuit, defendant Texas corporation, performing services in the state, not licensed in Alabama, had been served under this section by service effected upon the Secretary of State and moved to quash service of the complaint in the District Court as insufficient, in that no personal service was had. This motion was overruled by the trial court and this ruling was approved by the Court of Appeals, which observed: "We find no merit in the contention that appellant was engaged solely in interstate commerce, and not transacting or carrying on business within the State of Alabama at the time this suit arose so as to make it amenable to process by service upon the Secretary of State. See Code of Alabama, 1940, Title 7, Section 193. The leading Supreme Court cases of *International Harvester Co. v. Kentucky*, 234 U. S. 579, 34 S. Ct. 944, 58 L.Ed. 1479, *and International Shoe Company v. Washington*, 326 U. S. 310, 66 S. Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057, clearly establish that this type of service in such cases does not unduly burden interstate commerce, but meets all the essential requirements of due process."

Shippers Pre-Cooling Service v. Macks, 181 F. 2d 510. Frank W. Davies of Birmingham, for appellant. J. Kirkman Jackson of Birmingham, for appellee. (*Petition for writ of certiorari filed in the Supreme Court of the United States, June* 2, 1950; *Docket No.* 106.)

CALIFORNIA

Transfer agent ruled not liable for conversion of stock where it refused to effect transfer until it had communicated with its principal in order to obtain authorization.

Plaintiff, owner of shares of a Philippine company, for which defendant bank was California transfer agent, sought to hold defendant liable for conversion of these shares by reason of its refusal to transfer them upon his demand. Certificates for the shares, in plaintiff's name, were at the time in the possession of defendant bank by reason of having been pledged by plaintiff to a Manila bank for a loan which still amounted to approximately $500. Defendant's delay in effecting the transfer was occasioned by its desire, communicated to plaintiff, to contact the Philippine company. About a month and a half was required for this purpose and at its end, the defendant informed plaintiff that it had received the necessary authorization from the company and was prepared to effect the transfer. The trial court found that the bank failed to comply with plaintiff's demand within a reasonable time and concluded that it had thereby converted the stock and gave plaintiff judgment for its value.

Upon appeal, the California District Court of Appeal, First District, Division 2, reversed this holding and ordered judgment entered for the defendant transfer agent. The court applied the general rule prevailing, in the absence of express statutory provision to the contrary. This was that "there is no direct liability of a transfer agent or transfer officer to the holder for delay in transferring or refusal to transfer stock even if such delay or re-

One Source

ALBANY	ALBANY 3-2324
ATLANTA	CYPRESS 0546
BALTIMORE	SARATOGA 2657
BOSTON	HUBBARD 2-4420
BUFFALO	CLEVELAND 6162
CHICAGO	ANDOVER 3-1414
CINCINNATI	MAIN 3697
CLEVELAND	MAIN 1-4270
DALLAS	RIVERSIDE 1473
DETROIT	WOODWARD 3070
HOUSTON	ATWOOD 9446
LOS ANGELES	MADISON 9-2211
MINNEAPOLIS	ATLANTIC 4315
NEW YORK	RECTOR 2-2060
PHILADELPHIA	PENNYPACKER 5-7861
PITTSBURGH	ATLANTIC 1-2681
SAN FRANCISCO	YUKON 6-5586
SEATTLE	MAIN 4512
ST. LOUIS	CHESTNUT 1220
WASHINGTON	DISTRICT 1601
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fusal is wrongful, and might subject the corporation itself to liability in damages or in conversion," the agent or officer owing his duty only to the company, his principal, and not to the individual stockholder. Nothing in the California law was found to require a contrary conclusion.

Mears v. Crocker First National Bank of San Francisco, 218 P. 2d 91. Chickering & Gregory and John Philip Coghlan of San Francisco, for appellant. Eugene H. O'Donnell and Ralph Bancroft of San Francisco, for respondent. Commerce Clearing House Court Decisions Requisition No. 434773.

MARYLAND

Maryland statute, subjecting foreign corporation to suit by resident on cause of action arising out of contract made in state or liability incurred for acts done in state, "whether or not such foreign corporation is doing or has done business in this state," upheld by Federal District Court.

Service of process, upon two corporate defendants, in a tort action before the United States District Court, District of Maryland, Civil Division, was effected by serving the Maryland State Tax Commission, designated as an agent of foreign corporations under certain circumstances under Article 23, Sections 111(d), 119(d) and 120(a). Under the portion of Section 119(d) regarded by the court as pertinent the question was whether the companies could be classed as making a contract or incurring a liability for acts done within the state, "whether or not such foreign corporation is doing or has done business in this state." This section was said to be unique in having no parallel in comparative State statutes affecting foreign corporations.

The court noted that "except for the solicitation of orders neither defendant had any activities within or contacts with the State or transacted any business of substantial character in the usual sense." It held that neither defendant was subject to the jurisdiction of the State Court, from which the suit had been transferred, by virtue of doing business within the meaning of Article 23, Sections 111(d) and 120(a) of the Maryland Code.

Plaintiff contended, nevertheless, that both defendants were subjected to suit by reason of Section 119(d), by reason of the language quoted therefrom above, basing jurisdiction on the making of a contract or the incurring of liability by a transaction within the state, even if the corporation was not otherwise doing business in the state. Each defendant contended the section, as applied to its situation, would be a violation of the due process clause of the 14th Amendment to the Federal Constitution. The court held this objection to be good as to one of the defendants, which had made no contract and had had no transaction within the state in relation to the tort liability alleged in the complaint. As to the other defendant, the court observed that the facts with regard to it were quite similar. A difference stressed was the fact that this defendant's agent soliciting orders in Maryland, while not authorized to accept orders, "had been regularly and continuously acting in that capacity for a year or more past, and in the course of his solicita-

tion of orders not infrequently was called upon by local prospective customers for some advice as to utility and sufficiency of the defendant's product." The court also referred to the complaint as appearing to present an action for a tort occurring in Maryland by the agent of this foreign corporation allegedly within the scope of his authority, arising from a careless or ignorant misrepresentation as to the safety and utility of an instrument of his principal's manufacture in combination with an adjunct tool of the other defendant, resulting in serious harm to the resident plaintiff. "My conclusion of law," said the court, "is that these circumstances make it just and not unreasonable to require the foreign corporation to defend the suit here in the absence of further facts which would indicate the great relative inconvenience to the defendant." As to this defendant, its motion to dismiss the suit was overruled, "but without prejudice to its further consideration if, in the development of the case on the facts, the situation heretofore above assumed to exist with respect to the circumstances of the case bearing on jurisdiction are clearly shown to be incorrect; as of course it is a well-known rule that whenever absence of jurisdiction develops in a federal litigation the court should sua sponte, if necessary, dismiss the case."

*Johns v. Bay State Abrasive Products Co. et al.,** 89 F. Supp. 654. Philip V. Hendelberg, W. Hamilton Whiteford and Eugene A. Alexander, III, of Baltimore, for plaintiff. David R. Owen, Richard F. Cleveland and Semmes, Bowen & Semmes of Baltimore, for Reed Roller Bit Co. Charles C. G. Evans, Jesse Slingluff, Jr., Marbury, Miller & Evans and Michael Crocker of Baltimore, for Bay State Abrasive Products Co.

* The full text of this opinion is printed in the **State Tax Reporter**, Maryland, page 305.

NEW YORK

Corporation, renting hotel room for display of products and taking of orders, ruled doing business so as to be subject to service of process.

Service of process upon the defendant unlicensed foreign corporation, which it moved to vacate and set aside, was made upon its president and sales manager, who, for thirteen days, for the duration of a local toy fair, occupied a room in a New York City hotel for the display of samples of toys manufactured by the defendant, together with the prices asked for them. The president and sales manager solicited and accepted orders for such toys.

The City Court of New York, Special Term, New York County, Part I, in upholding the service and denying the motion to set it aside, emphasized that the defendant was represented by its president and sales manager, who personally took orders which needed no approval other than his own, noting particularly that it was clear that the corporation was in New York not only to attend the fair, but also to do business with those New Yorkers who were willing to enter into business dealings with it. As to a contention that the volume of business done by the corporation in the state was small, the court observed: "Whether the

quantity of business done within the state by a foreign corporation is greater or less in amount than the business transacted by it elsewhere does not affect amenability of foreign corporation to service of process if evidence of doing business within state is otherwise adequate to make corporation amenable to process."

Lindner v. Plastic Toys, Inc., 96 N. Y. S. 2d 513. Bernard Katzen of New York City, for plaintiff. Feldman & Barrett of New York City, for defendant.

Suit against an unlicensed railroad corporation dismissed where the cause of action arose in Alabama and where the company maintained a financial office and two offices for the solicitation of business in New York

A suit against an unlicensed foreign railroad corporation was dismissed for lack of jurisdiction over it by the United States District Court for the Southern District of New York under the following circumstances:

The action was brought by a resident of New Jersey to recover damages for injuries sustained by her while a passenger on defendant's railroad at a point in Georgia. Defendant operated no lines in New York, its lines being located in certain southern states. Its chief executive offices were located in Louisville, Kentucky, where all operating and traffic policies were determined and where stockholders' meetings were held. It maintained in New York a two room office for the solicitation of freight business and a one room office staffed by four employees for the solicitation of passenger business. The freight office did not issue bills of lading or collect freight charges and the passenger office did not sell tickets or collect ticket charges. Neither office settled claims or handled cash transactions. No bank accounts were maintained and all expenses were paid by checks sent out from the main office at Louisville. A financial office was also maintained in New York for the purpose of paying interest on its bonds and transferring its stock, supervised by one of the vice-presidents, who resided in New York.

The court noted that the events connected with the case did not take place in New York and that defendant's witnesses resided in Alabama, where the cause of action arose and that a trial in New York would subject defendant to great inconvenience and that the record disclosed no countervailing benefits to the plaintiff. Concluding that the defendant should not be required to defend the suit in New York, the court pointed out that, in an action previously brought against the same defendant by a different plaintiff, the New York courts had reached the same conclusion on substantially the same facts.

Smith v. Louisville & Nashville Railroad Company, United States District Court, Southern District of New York, May 1, 1950. Myers & Guerin of New York City, for plaintiff. Bleakley, Platt, Gilchrist & Walker; Dennis P. Donovan, of counsel, of New York City, for defendant. Commerce Clearing House Court Decisions Requisition No. 432399.

PENNSYLVANIA

Unlicensed foreign railroad corporation, with office and employees in state, soliciting business relating to its system in other states, ruled not subject to service of process in Federal court action, not based upon local activities.

Defendant Wisconsin railroad corporation, which moved to quash service of summons on it and to dismiss the complaint as to it in an action in the United States District Court, Eastern District of Pennsylvania, was not licensed to do business in that state. It had no tracks there and did not transport passengers or freight over the tracks of any other railroad in Pennsylvania. It leased office space in Philadelphia and its name was listed in the telephone directory, but the sole purpose of this office was to solicit interstate freight and passenger business which would travel over its system outside of Pennsylvania. There were seven employees in this office, and service was made upon the employee in charge, who divided his time between the Philadelphia and Washington, D. C., offices. The other three principal employees covered Delaware, Maryland and Virginia, as well as Pennsylvania. No local bank account or petty cash fund was maintained, all salaries and expenses being paid by check from the Chicago office of defendant, which furnished all supplies. No bills of lading were issued by the Philadelphia office, but it did sell approximately eight passenger tickets a month for travel over its lines in other states. The only property owned within the Eastern District of Pennsylvania was the office furniture in the Philadelphia office.

The court, after an examination of decisions of the Supreme Court of the United States involving process served upon railroad companies operating in foreign states under circumstances comparable to those outlined, concluded that the moving defendant's activities within the District were not of sufficient quality or quantity to make it amenable to service of process on a cause of action which, as in this instance, did not arise out of those activities. The motion to quash the service and to dismiss the complaint was therefore granted as to this defendant.

*Fiorella v. Baltimore and Ohio Railroad Co. et al.,** United States District Court, Eastern District of Pennsylvania, April 6, 1950. Commerce Clearing House Court Decisions Requisition No. 430924.

* The full text of this opinion is printed in the **State Tax Reporter,** Pennsylvania, page 10,672.

Foreign corporation, merely soliciting orders in state, ruled not doing business so as to be subject to service of process.

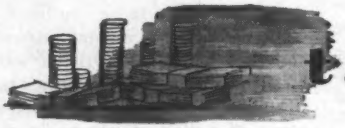
Defendant Delaware company moved to dismiss an action against it in the United States District Court for the Eastern District of Pennsylvania, in which service had been made upon the wife of a man employed by defendant, having the title of "District Manager," although his chief functions were to

solicit dealers to handle defendant's products and to solicit orders for defendant's products. He used his home in the Eastern District as the base for his operations; he had no authority to adjust claims; his orders were subject to acceptance at the home office of defendant in North Carolina, as were his suggestions as to prospective dealers. Defendant had no property and maintained no office in Pennsylvania. It was not listed in any Pennsylvania telephone directory, nor did it have any bank account there. Products sold were not delivered in Pennsylvania but were delivered at the North Carolina plant, where the purchaser took physical possession.

The court granted the motion to dismiss the action and to quash the service of summons, concluding that, under Pennsylvania state court decisions, such mere solicitation of business did not in itself constitute the "doing of business" for such a purpose.

*Read v. The Corbitt Company,** United States District Court, Eastern District of Pennsylvania, March 31, 1950. J. Webster Jones of Philadelphia, for the plaintiff. H. Francis DeLone of Philadelphia, for the defendant. Commerce Clearing House Court Decisions Requisition No. 430911.

*The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,670.



taxation

FLORIDA

Constitutionality of 1949 Florida sales tax upheld by the Florida Supreme Court as applied to rentals.

In *Gaulden v. Kirk*, decided by the Florida Circuit, Fifteenth Judicial District, on December 19, 1949, (The Corporation Journal, May, 1950, page 154), the Florida sales tax act of 1949, which, among other things, imposes a tax of 3% on rentals charged for living quarters, was held valid. Upon appeal, this decision has been affirmed by the Supreme Court of Florida.

*Gaulden v. Kirk,** Supreme Court of Florida, July 7, 1950. J. Tom Watson of Tampa and Samuel H. Adams of West Palm Beach, for appellant. Richard W. Ervin, Attorney General, Fred M. Buras, Asst. Atty. General and Frances C. Millican and Clyde G. Trammell, Jr., Special Asst. Atty. General, for appellee. Commerce Clearing House Court Decisions Requisition No. 436905; 47 So. 2d 567.

*The full text of this opinion is printed in the **State Tax Reporter**, Florida, page 6803.

state legislation

Arizona—Chapter 57 of the First Special Session amended the Privilege Sales Tax Law by repealing the tax on gross income from manufacturing or processing, relieving the manufacturer from paying the manufacturing tax of ¼ of 1% on articles which are manufactured and sold for resale purposes and eliminating the tax on any processing of items which are sold for resale, but taxing the manufacturer at the rate of 2% on articles sold direct to the consumer.

Merger and consolidation provisions, previously limited to apply to domestic corporations, have been expanded by the enactment of Chapter 3, Second Special Session, to embrace procedure for the merger or consolidation of domestic and foreign corporations.

Kentucky—The List of Resident Stockholders and Bondholders, filed by corporations on or before June 1, 1950, will hereafter be filed on or before March 15, annually. (H.B. 284.)

Mississippi—The period of the existence of Mississippi corporations is increased from fifty years to ninety-nine years by Senate Bill 394.

New Jersey—Chapter 102 authorizes the directors or trustees of New Jersey corporations to pay various state taxes, notwithstanding that there may be doubts as to their validity.

New York—Chapter 588 adds a new section to the Membership Corporations Law requiring every New York Membership corporation organized before January 1, 1948, to file a certificate of report of existence with the Department of State at Albany, on or before June 15, 1951.

Under Chapter 20, all business corporations, other than real estate corporations, operating on a fiscal year basis, will file Form 3-CT and make payment of the first half of the Franchise (Income) Tax due under Article 9-A of the Tax Law within three and one-half months after the close of the fiscal year, regardless of when the fiscal year ends. The time for paying the remainder of the tax by fiscal year corporations is changed to on or before the first day of the eighth month after the close of the fiscal year. (The returns and payments of calendar year corporations continue due as heretofore.)

Rhode Island—S.B. 258 amends Sec. 85, Ch. 116, General Laws by providing that stock of domestic corporations without par value is to be treated, for organization fee purposes only as if it had a par value of $1., rather than $100., as formerly.

S.B. 257 provides special, comparatively low, rates of franchise tax for a Rhode Island corporation which shows, by a supplemental affidavit that it has not, at any time during the next preceding taxable year, been engaged within the state in any business activities.

South Carolina—H. B. 2744 authorizes the appointment of a committee from the House of Representatives to study and prepare sales tax legislation.

appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

OCTOBER 1949 TERM

PENNSYLVANIA. Docket No. 775. *Kroese v. General Steel Castings Corporation et al.*, 179 F. 2d 760. (The Corporation Journal, April, 1950, page 125.) Jurisdiction—indispensable parties—declaration of dividends. **Petition for writ of certiorari filed, April 26, 1950. Certiorari denied, June 5, 1950. (70 S. Ct. 1026.)**

OCTOBER 1950 TERM

ALABAMA. Docket No. 106. *Shippers Pre-Cooling Service v. Macks*, 181 F. 2d 510. (The Corporation Journal, October, 1950, page 188.) Foreign corporations—venue—interstate commerce—service on Secretary of State. **Petition for writ of certiorari filed, June 2, 1950.**

CALIFORNIA. Docket No. 152. *El Dorado Oil Works v. McColgan*, 215 P. 2d 4. (The Corporation Journal, May, 1950, page 152.) Corporate franchise tax—allocation factors used. **Appeal filed, June 26, 1950.**

CONNECTICUT. Docket No. 132. *Spector Motor Service, Inc. v. O'Connor*, 181 F. 2d 150. (The Corporation Journal, May, 1950, page 153.) State franchise tax liability—qualified interstate trucking corporation—interstate commerce. **Petition for writ of certiorari filed, June 15, 1950.**

GEORGIA. Docket No. 4. *Georgia Railroad & Banking Company v. Redwine*, United States District Court, Northern District of Georgia, July 29, 1949. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949, Jurisdiction noted, December 5, 1949. February 20, 1950:** *"Per curiam:* Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient State remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies." (70 S. Ct. 472.)

ILLINOIS. Docket No. 133. *Norton Co. v. Department of Revenue*, 405 Ill. 314, 90 N. E. 2d 737. (The Corporation Journal, April, 1950, page 128.) State Retailer's Occupation (Sales) Tax—interstate shipments into Illinois. **Petition for writ of certiorari filed, June 15, 1950.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin**, 1950-1951.

regulations and rulings

Florida—The assessor should not make any exemption or concession for tax-exempt federal securities owned by a corporation, when determining the value of corporate stock issued by such corporation, for purposes of intangible personal property taxation against owners and holders of the stock. (Opinion of the Attorney General to the State Comptroller, State Tax Reporter, Florida, ¶ 29-018.)

Indiana—Federal gasoline taxes are not deductible under the gross income tax law. (Ruling of the Indiana Department of Revenue, State Tax Reporter, Indiana, ¶ 15-037.)

Kentucky—The Attorney General of Kentucky has ruled that the fact that out-of-state savings banks may foreclose and acquire property in securing any particular mortgage, and hold such property in a manner which constitutes their "doing business" in Kentucky, will not result in any Kentucky tax liability with respect to any other unforeclosed mortgage owned and held by the banks outside of Kentucky. (State Tax Reporter, Kentucky, ¶ .406.)

The Attorney General of Kentucky has also held that when a corporation files an amendment changing the number of shares, the organization tax is computed upon the total number of shares authorized by the amendment and upon the number of shares authorized before the amendment becomes effective, the tax due then being upon the amount which is in excess as occasioned by filing the amendment. (Opinion of the Attorney General to the Secretary of State, Tax Reporter, Kentucky, ¶ 407.)

Where the principal place of business of a corporation doing business in Kentucky changes with the activity of the corporation, a statement of the change of location must be filed with the Secretary of State. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ .104.)

Maryland—A machine lease agreement which contains an option to purchase by the lessee is a bailment lease which, under Maryland law, is a conditional sale and not subject to the recording tax. (Opinion of the Attorney General to the Superior Court of Baltimore City, State Tax Reporter, Maryland, ¶ 48-518.)

Missouri—A sales transaction between a Missouri buyer and a Missouri seller in which the subject matter of the sale was sent into Missouri by an Illinois corporation is not exempt from the Missouri sales tax. (Opinion of the Attorney General to the Department of Revenue, State Tax Reporter, Missouri, ¶ 64-735.)

Ohio—Rule No. 223, issued by the Tax Commissioner, governing the situs of deposits, divides taxable deposits into two classes, consisting of those which are used in business and those which are not used in business. (State Tax Reporter, Ohio, ¶ 20-766A.)

some important matters

For October and November

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

California—Quarterly Retail Sales Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

Connecticut—Quarterly Retail Sales Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.

Georgia—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

Indiana—Quarterly Gross Income Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

Iowa—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

Louisiana—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

Massachusetts—Second Installment of Excise Tax due on or before October 20.—Domestic and Foreign Corporations.

Missouri—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

New York—Second Installment of Franchise (Income) Tax of Business Corporations due on or before November 15.—Domestic and Foreign Business Corporations other than real estate companies.

North Dakota—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

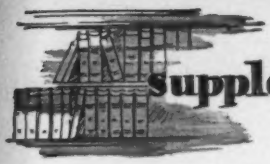
Oregon—Returns of Withholding at the source due on or before October 30.—Domestic and Foreign Corporations.

Rhode Island—Semi-Annual Report to Division of Industrial Inspection during October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

South Dakota—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

United States—Withholding at source due on or before October 31.—Domestic and Foreign Corporations.

West Virginia—Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Delaware Corporations (1949 Edition). Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of contractor getting lawyer's advice before undertaking construction work outside home state, even for federal government.

What Constitutes Doing Business. (Revised to March 1, 1948.) A 187-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

What Does a Transfer Agent Do? This illustrated pamphlet gives the highspots of a transfer agent's services in 3 minutes reading time, with explanatory text if you want to read further. Of value to small as well as large corporations.

More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

When a Corporation Is P. W.O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.